Office-Supreme Court, U.S.
FILED
JAN 16 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 746

JOSEPH ALEXANDER, *et al.*,
Petitioners,

v.

HENRITA TODMAN, *et al.*,
Respondents.

REPLY BRIEF OF PETITIONERS

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ARGUMENT

The statement of the question presented in the Respondents' brief omits therefrom the crux of the entire case. It fails to include in the question the fact found by the trial judge that the Respondents, other than the Supervisor of Elections, were members of an opposing party who enrolled in the Democratic Party, and through various means brought pressure to bear upon the other members of their party, the Unity Party, to enroll in the Democratic Party for the sole purpose, by this concerted action, of taking over the control of the Democratic Party of the Virgin Islands, ousting the membership of that party, and establishing a one party government in the Virgin Islands.

We refer the Court to their publication of May 4, 1963, which is set forth in some detail in Judge Gordon's opinion on pages A-26, A-27, A-28 and A-29 of the Petitioners' brief.

In their argument they attempt to prevent this Court from granting writ of *certiorari* by various specious arguments:

1. They set forth the action of the Credentials Committee at the Democratic National Convention. It is a novel theory that a body who did not hear the case, and is a non-continuing body, can, by their decision, supplant the courts of the United States.

This applies with equal force to their argument that they accepted the National Committeeman and National Committeewoman supported by the Respondents over the National Committeeman and National Committeewoman sponsored by the Petitioners.

2. As to their argument that the Petitioners withdrew their candidates from the October 1, 1964 primary, they fail to state that the Supervisor of Elections refused to enter them as Democratic Party candidates unless and until the Petitioners obtained the consent of the Chairman and Secretary of the Respondent group to their being listed as Democrats. If the Petitioners had sought the approval of the Chairman and Secretary of the Respondent group to be listed as Democrats in the primary, then their argument would have been that the Petitioners recognized this group as the true Democratic Party of the Virgin Islands. Viewed in this light, these candidates for the primary were not withdrawn. The Supervisor of Elections never accepted them.

They were forced to run as independent candidates sponsored by a group known as the Donkey Democrats

which, if the decision of the Third Circuit is upheld, will pass out of existence.

As to the portion of their brief entitled, "ARGUMENT", we have the following to say:

1. Appeals are taken from the District Court of the Virgin Islands to the United States courts. Under this judicial framework, the Supreme Court of the United States is the court of highest jurisdiction to which an appeal involving the Virgin Islands can be made. Consequently, the Supreme Court of the United States is passing upon territorial law by reason of the appellate procedure for cases arising in the Virgin Islands.

2. The argument that the New York law and the Virgin Islands law are not similar in their provisions is incorrect. The Virgin Islands Code provides that an elector is eligible to enroll as a member of a recognized party of his or her choice by subscribing to support the policies of the said party, whereas the New York statutes give to the elector the same right by expressing themselves in general sympathy with the policies of the party and pledging themselves to vote for some of its candidates at the next general election. If anything, the Virgin Islands Code provides a stronger criterion than does the New York Code. The only difference is in the means of procedure.

The cases cited under this argument by the Respondents do not meet the issue in this case. They merely hold that because a person is an enrolled member of one party and supports and votes for a candidate of another party in a general election, this is no cause for forfeiting that person's enrollment in that particular party.

3. We reiterate that the decision of the Third Circuit, if permitted to stand as applied to the situation existing

in this case, would place above the law a concerted enrollment of members of one party in an opposing party, their voting for party officers of their choice and thereby taking over control of the opposing party.

4. The mere fact that there was almost an even balance between the Unity Party of the Respondents and the Democratic Party of the Petitioners is no answer to this case. The real questions still remain as they are stated in the petition for *certiorari*.

The mere fact that in spite of the difficulties presented, the Petitioners were able to elect five of eleven senators as independents is no answer. It has been pointed out that the election of November 3, 1964, under the decision of the Third Circuit, is the last one in which the Petitioners' candidates can use the designation of Democrats. If that decision stands, then the political structure and party which the Petitioners have built up over a period of years has been destroyed and in future elections there will not be the organized opposition to the Respondents' candidates that there was in the 1964 general election.

5. There was substantial evidence to support each conclusion of Judge Walter A. Gordon of the District Court of the Virgin Islands. A reading of the plan which the Respondents published in their newsletter, and which they followed, standing alone would support the Judge's decision. However, there was other very substantial evidence in the case which supported the trial Judge's decision.

6. A political party's chief asset is the loyalty of its members. Outsiders belonging to an opposing political party do not have the right to take that asset from a political party by taking over the control of that party. It is illegal for them to do so; and any concerted action

to accomplish this unlawful objective constitutes conspiracy. The protection given to political parties is well set forth in the following cases:

Mele v. *Ryder,* 188 N.Y.S. 2d, 440;
Sheldrick Association v. *Blaike Regular Democratic Organization, Inc.,* 134 N.Y.S. 2d, 218;
Plonski v. *Flynn,* 222 N.Y.S. 2d, 543.

7. The issue of the fraud, collusion and conspiracy of the Respondents has never been submitted to the voters. The fact that some of the candidates of the Respondents as well as some of the candidates of the Petitioners are popular with the voters is of no consequence in this case.

Fraud, collusion and conspiracy are legal matters and whether these exist is a question for the court and not for the voters. To hold that it was a question for the voters, particularly where those issues were not before the public, would permit the public to overrule the decisions of the courts, including decisions of the Supreme Court of the United States.

CONCLUSION

It is, therefore, respectfully urged that the petition for a writ of *certiorari* be granted.

Respectfully submitted,

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January 15, 1965.